

Court of Appeals, State of Michigan

ORDER

Hart Enterprises Inc v Sparta Twp

Docket No. 256817

LC No. 00-291075 and 296252

E. Thomas Fitzgerald
Presiding Judge

Peter D. O'Connell

Kirsten Frank Kelly
Judges

On the Court's own motion, the December 22, 2005, unpublished per curiam opinion is AMENDED to correct a clerical error. The opinion caption inadvertently omitted Michigan Tax Tribunal docket number 296252. Both lower court matters were disposed by the Court's December 22, 2005, decision.

In all other respects, the December 22, 2005, opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 29 2006

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

HART ENTERPRISES, INC.,

Petitioner-Appellant,

v

SPARTA TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

December 22, 2005

No. 256817

Michigan Tax Tribunal

LC No. 00-291075

Before: Fitzgerald, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Petitioner, Hart Enterprises, Inc., appeals as of right from a decision of the Michigan Tax Tribunal in this personal property assessment action. We affirm.

Petitioner contends that the Tax Tribunal erred when it found petitioner disposed of \$98,923.45 worth of personal property in 2001. We disagree. At the hearing before the Tax Tribunal, petitioner's vice president testified that the property was disposed of before petitioner relocated to Sparta Township in April 1998. The auditor hired by respondent testified that petitioner disposed of the property in 2001. In addition, the depreciation expense report provided by petitioner to the auditor indicated on its face that the disposal took place in 2001. Based on the information contained in the depreciation expense report, the Tax Tribunal concluded that the disposal occurred in 2001.

"In the absence of fraud, review of a Tax Tribunal decision is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle." *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 18-19; 678 NW2d 619 (2004). "The Tax Tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Id.* Substantial evidence is evidence that a reasonable mind would find adequate to support a decision but may be less than a preponderance. *Sweepster, Inc v Scio Twp*, 225 Mich App 497, 502; 571 NW2d 553 (1997).

Moreover, in a dispute before the Tax Tribunal regarding the value of property for taxation purposes, the petitioner has the burden of establishing the true cash value of property. MCL 205.737(3). However, the Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property. *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Thus, the Tax Tribunal has a duty to make its own, independent

determination of true cash value. *Id.* Accordingly, the Tax Tribunal is not bound to accept the parties' theories of valuation. *Id.* at 390.

We find that the Tax Tribunal's determination that \$98,923.45 worth of personal property was disposed of in 2001 was supported by competent, material, and substantial evidence on the whole record. First, the depreciation expense report indicated on its face that the disposal took place in 2001. Second, the auditor testified, based on his understanding of, and familiarity with, the generic software program used to generate the depreciation expense report, that if the property had been disposed of in an earlier year, it would not have appeared on the report for 2001. Third, petitioner did not present evidence to refute the auditor's testimony. Fourth, although petitioner presented testimony that the property was disposed of prior to its move to Sparta Township, the weight given to that testimony was within the Tax Tribunal's discretion. *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 191; 413 NW2d 700 (1987), citing *Kern v Pontiac Twp*, 93 Mich App 612, 622; 287 NW2d 603 (1979).

Petitioner also contends that the State Tax Commission multipliers for idle property should have been applied to certain pieces of equipment located at petitioner's facility. We disagree.

The Michigan Constitution calls for the uniform taxation of property. *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 351; 568 NW2d 685 (1997). Thus, the State Tax Commission manual sets forth uniform guidelines for assessing personal property. *Id.* Under the guidelines, all idle property is treated the same and the true cash value of idle property is calculated utilizing the idle multiplier, as opposed to an in-use multiplier. *Id.* at 351-352. The Tax Commission manual defines "Idle Equipment" as follows:

Idle equipment is equipment which has been disconnected and is stored in a separate location. This equipment is not part of the existing process, not even on a standby basis

Sometimes, equipment may be "idle-in-place" because storage in a separate location is not feasible. This could be due to the large size of the equipment involved or the fact that it is underground equipment. Proof should be presented to the assessor that equipment is "idle-in-place."

Petitioner maintained that it operated on a "job shop basis," i.e., manufactured goods only when it received an order and that, once the order was filled, the equipment ceased operation and became idle. Thus, petitioner classified the equipment as idle if, on the respective tax day, the equipment was not in operation and there were no outstanding orders requiring use of the equipment.

The Tax Tribunal, however, found that petitioner's equipment was "Standby Equipment" rather than "Idle Equipment." The Tax Commission manual defines "Standby Equipment" as follows:

Standby equipment is equipment which is not usually in use but is ready and immediately on hand for use when needed. For example, a company might have a standby boiler which is used when there are problems with the main boiler.

This could also be true of production machinery and equipment standing by for use in emergencies. Standby equipment is considered necessary for production even though it is not being used during certain periods of time.

Standby equipment is valued the same as machinery and equipment in use.

Finding that the property constituted “standby equipment,” the Tax Tribunal refused to apply the idle property multipliers to the personal property. The Tax Tribunal’s decision to classify Hart’s equipment as “Standby Equipment” rather than “Idle Equipment” was supported by competent, material, and substantial evidence in the record. First, petitioner failed to present records to substantiate its claim that the equipment was idle. Second, petitioner’s definition of idle was inconsistent with the definition of “Idle Equipment” provided in the Tax Commission guidelines. Therefore, even though petitioner labeled the property “idle,” the Tax Tribunal was not required to accept petitioner’s determination. Third, there was no evidence from which the Tax Tribunal could conclude the processes in which these pieces of equipment were involved were discontinued rather than temporarily suspended. Fourth, during the audit, the auditor did not observe any equipment that was unplugged, off to the side, or otherwise removed from the main manufacturing assembly areas.

Ultimately, petitioner urges us to find that the Tax Tribunal erred because it failed to give the appropriate weight to the testimony of petitioner’s vice president. However, the weight given to evidence presented by the parties is a matter within the Tax Tribunal’s discretion. *Teledyne Continental Motors, supra*. Accordingly, the Tax Tribunal has discretion to determine the credibility of the witnesses before it.

In addition, because we review the Tax Tribunal’s decision for an error of law, “it does not matter that the contrary position is supported by more evidence, that is, which way the evidence preponderates, but only whether the position adopted by the agency is supported by evidence from which legitimate and supportable inferences were drawn.” *Sweepster, supra* at 502. The Tax Tribunal’s decision is supported by evidence from which legitimate and supportable inferences were drawn.

In sum, conclude that the Tax Tribunal’s finding that \$98,923.45 worth of personal property was disposed of in 2001 was supported by material, competent, and substantial evidence in the record. In addition, we hold that the Tax Tribunal’s characterization of petitioner’s equipment as “Standby Equipment” was supported by material, competent, and substantial evidence and, therefore, the Tax Tribunal did not commit an error of law when it refused to apply the idle equipment multipliers to the personal property at issue.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O’Connell

/s/ Kirsten Frank Kelly